

REMARKS/ARGUMENTS

Claims 1, 3-5, 10-22, 25-28, 30-40, and 78-80 are pending. Claims 2, 6-9, 23, 24, 29, and 41-77 were previously canceled. Claims 1, 3-5, 10-22, 25-28, 30-34, and 78-80 stand substantively rejected. Claims 37-40 are allowed, and claims 35-36 are objected to. In this Amendment, claim 33 is canceled and claims 35, 79, and 80 are amended. Reconsideration of the claims is respectfully requested.

Claims 35 and 79 are amended for formal reasons. Support for the amendment to claim 80 can be found in the specification at, for example, page 3, lines 6-9. No new matter is introduced.

First Claim Objection

Claim 79 was objected to for reciting a protein. Amended claim 79 does not recite the protein. Withdrawal of this objection is respectfully requested.

Second Claim Objection

Claims 35 and 36 were objected to as being dependent upon a rejected base claim. Applicants thank the Examiner for indicating that these claims present allowable subject matter.

First Rejection Under 35 U.S.C. §112

Claim 80 was rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement. This rejection is overcome as follows.

At page 5, the Office Action alleges that claim 80 is readable on metastatic cancer and that the specification does not provide guidance for the treatment of metastatic cancer. Applicants disagree. However, for the purpose of expediting prosecution and without acquiescing to the rejection, Applicants have amended claim 80 to recite treatment of tumor cells. Withdrawal of this rejection is respectfully requested.

Second Rejection Under 35 U.S.C. §112

Claims 30 and 33 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. This rejection is overcome as follows.

At page 6, the Office Action alleges that it is unclear how the intraperitoneal administration of claim 30 is the same scope as the direct contact of claim 1. Applicants

disagree. However, for the purpose of expediting prosecution and without acquiescing to the rejection, Applicants have amended claim 30 to indicate that the contacting step involves intraperitoneal administration to directly contact the ovarian cancer cells. Claim 33 is canceled. Withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. §102

Claims 1, 3, 10, 18-22, 25-28, 31, 32, and 78-80 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 6,262,032 to Tocque. This rejection is traversed.

According to the cover page of Tocque, the §102(e) date of that reference is July 17, 1997. The instant application claims priority to U.S. Provisional Patent Application Nos. 60/038,065 and 60/047,834, filed February 18, 1997 and May 28, 1997 respectively. The pending claims of the instant application are supported by these provisional applications, both of which were filed before the Tocque §102(e) date. Hence, Tocque is not a proper §102(e) reference. Withdrawal of this rejection is respectfully requested.

First Rejection Under 35 U.S.C. §103

Claims 1, 10-13, 15-17, and 34 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Tocque in view of U.S. Patent No. 5,932,210 to Gregory et al. This rejection is traversed.

According to MPEP 2141.01(I), before answering Graham's content inquiry, it must be known whether a patent or publication is a proper §102 reference. As indicated above, Tocque is not a proper §102(e) reference, and therefore does not support the §103 rejection.

Moreover, Gregory and the instant application are both owned or subject to an obligation of assignment to Canji, Inc., and Gregory was filed subsequent to both of the provisional applications to which the instant application claims priority. Thus Gregory is not a proper §103 reference. Withdrawal of this rejection is respectfully requested.

Second Rejection Under 35 U.S.C. §103

Claims 1, 10, 11, and 14 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Tocque in view of U.S. Patent No. 5,932,210 to Gregory et al. This rejection is traversed.

It appears that this second §103 rejection (page 12 of the Office Action) may have been inadvertently included in the Office Action, as it substantially duplicates the first §103 rejection (page 11 of the Office Action). If the second §103 rejection is maintained, clarification is respectfully requested.

Third Rejection Under 35 U.S.C. §103

Claims 1, 4, and 5 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Tocque in view of Roth et al. "*Gene therapy for cancer: what have we done and where are we going?*" Journal of the National Cancer Institute, Jan. 1;89(1):21-39 (1997) and Shea "*High-dose carboplatin plus paclitaxel with granulocyte colony-stimulating factor and peripheral blood stem-cell support in non-small-cell lung cancer*" Cancer Chemotherapy and Pharmacology, 40 Suppl:S74-8 (1997). This rejection is traversed.

According to MPEP 2141.01(I), before answering Graham's content inquiry, it must be known whether a patent or publication is a proper §102 reference. As indicated above, Tocque is not a proper §102(e) reference, and therefore does not support the §103 rejection. Withdrawal of this rejection is respectfully requested.

It appears claim 1 may have been inadvertently included in this rejection, as it does not recite a third chemotherapeutic agent. If this rejection is maintained, clarification is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Appl. No. 10/086,294
Amdt. dated June 26, 2007
Reply to Office Action of March 26, 2007

PATENT

Respectfully submitted,

/Nathan S. Cassell/

Nathan S. Cassell
Reg. No. 42,396

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
61075106 v1